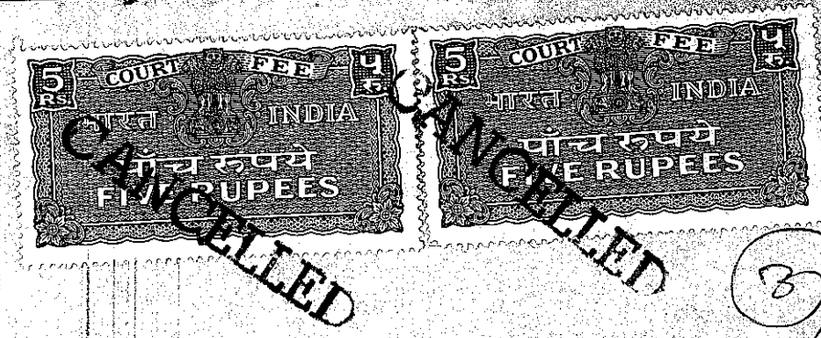


Single Bench

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

W.P.No.2109 Of 2004

***BETWEEN***

1. Brijmohan Dua, aged about 50 years, s/o Sita ram Dua, r/o Gondpara, Post office: Golebazar, Bilaspur, Tehsil & District: Bilaspur(C.G.)

2. Smt. Chandrakali Bai, aged about 45 years, w/o Prakash, r/o Jahrabhata, Tehsil & District: Bilaspur(C.G.)

**PETITIONER**

***AND***

1. Indian Church Council of the Disciple of Christ Society, through its Executive Secretary, Address: Civil Lane, Jahrabhata, Bilaspur(C.G.)

**RESPONDENTS**

**WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA**

**THE PETITIONERS:**

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

50

# आदेश पत्रक

मामला क्रमांक W.P. 2109/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

**25/08/2004**

Shri S Soni, counsel for the petitioners.

The petitioners have preferred this writ petition under Article 227 of the Constitution of India, being aggrieved by the order dated 01/03/2004 passed by 3rd Civil Judge, Class I, Bilaspur, whereby the learned Civil Judge rejected the application of the petitioners herein filed under Order 26, Rule 9 of C.P.C., for appointment of Commissioner i.e., Revenue Inspector, Nazul, Bilaspur for site inspection and demarcation of the land bearing Nazul plot no.65/1 & 85/1.

Brief facts leading to filing of this writ petition are that the respondent herein filed a suit (Annexure P/4) against the petitioner herein for possession of Plot No.85/1, Sheet No.4 and also for injunction and for damages in the year 1984. The suit is still pending and the said suit is fixed for evidence and at this stage petitioners herein moved an application under Order 26, Rule 9 read with Section 151 of the C.P.C for appointment of Revenue Inspector as Commissioner which was rejected by the learned Civil Judge vide impugned order.

I have heard learned counsel for the petitioner on admission.

Learned counsel for the petitioner submits that the respondent herein filed a suit in the year 1984 in which the respondent herein had not mentioned Khasra number of the disputed land whereas, in the year 2003 respondent herein moved an application for amendment of the plaint and sought amendment regarding mentioning of the Khasra number of the disputed land and their amendment was allowed. He further submitted that in view of the amendment, it has become necessary that Commissioner be appointed in order to find out and ascertain whether the Khasra number of the disputed land is 85/1 or not.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(57)

# आदेश पत्रक

मामला क्रमांक W.P. 2109/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -2- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

I have perused the impugned order.

Learned Civil Judge, while rejecting the application filed by the petitioners herein, observed that the dispute regarding Khasra number was to be decided based on the documents and evidence adduced by the parties. If the plaintiff fails to prove his case by adducing evidence, then his suit will be dismissed. It is not necessary to appoint the Commissioner in order to find out the real situation of the disputed land. In this connection, relevant provisions of Order 26 Rule 9 of the C.P.C. are that "In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, then the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court".

In this case, the learned Civil Judge has recorded that the suit is pending since 1984 and in order to ascertain the Khasra number of the disputed land the plaintiff is required to prove his case, if he fails to prove his case by adducing the evidence, then his suit will be dismissed. For that purpose, appointment of Commissioner is not necessary. The Court after recording the reasons reached the conclusion that appointment of the Commissioner is not necessary and the parties by adducing their evidence can prove the actual Khasra number of the disputed land.

Under Article 227 of the Constitution of India, it is settled law that while exercising jurisdiction of certiorari, this Court cannot sit as Appellate Court and jurisdiction can be exercised in an appropriate case only when the Court reaches to conclusion that the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

52

# आदेश पत्रक

मामला क्रमांक W.P.No. 2109/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित — 3 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, and the supervisory jurisdiction is not available to correct mere facts of law unless the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law or a grave injustice or gross failure of justice has occasioned thereby and error is patent which is self-evident.

None of the above conditions are satisfied in this matter. The learned Civil Judge after considering the arguments of both the parties, reached the conclusion that appointment of Revenue Inspector (Nazul) is not necessary to inspect the site.

Therefore, I do not find any substance in this petition, same is liable to be dismissed and it is accordingly dismissed.

In view of this order, M.W.P. No.1892/2004 and I.A. No.4913/2004 stand disposed of.

Sd/-
L.C.BHADOO
Judge

Raju

[पीछे देखिये